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Legal Guide CR-8

HOW TO CORRECT A CREDIT CARD BILLING ERROR

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A federal “billing-error law” can help you in these kinds of situations involving use of a credit card:

Example 1: Your monthly statement includes a \$47.50 purchase that you or your spouse didn't make.

Example 2: Your statement does not give you credit for a payment you made.

Example 3: Your statement does not reflect a credit memo that a retailer issued after you returned a product.

Example 4: Your statement includes a debit for a purchased item that was delivered to you but that you didn't accept.

Example 5: Your statement includes a debit that is not identified; you can't tell what it's for.

Example 6: Your statement contains an accounting error; the figures just don't add up.

Example 7: Your statement shows an extension of credit for which you want clarification or documentary evidence.

These are all examples of “billing errors” that a credit card issuer must take action to correct if it receives proper written notice of the error within the required time.

Your Billing Error Correction Rights

To enjoy your rights under the federal credit card “billing-error law,” you must:

- Notify the credit card issuer in writing no later than 60 days after the credit card issuer mails you the first periodic statement that includes the disputed charge; and

- Include your name and account number in the letter, telegram or other written communication that you send to the card issuer; and

- Include the type, date, and amount of the error in the letter, telegram or other written communication that you send to the card issuer; and

- Ensure that the card issuer receives this billing-error notice within 60 days after the card issuer has transmitted the first periodic statement that reflects the error.

Once the credit card issuer receives your written notice of the billing error (your “billing-error notice”), the “billing-error law” requires the credit card issuer to do each of the following:

- **First:** Either correct the error, or mail or give you a written acknowledgment of receipt of the notice, within 30 days after receiving it, and
- **Second:** Within two complete billing cycles, decide whether the card issuer believes that an error occurred, and take appropriate action.

The card issuer then must do one of the following:

- **First:** If the card issuer believes a billing error occurred: (a) correct the billing error, and (b) credit your account with any disputed amount and related finance or other charges, and (c) mail you a correction notice, or
- **Second:** If the card issuer, after conducting a reasonable investigation, determines that no billing error occurred: mail or deliver you a document that explains the reasons for the card issuer's belief that there was no billing error.

Billing Error Correction Procedure

A letter or other written notice from you to your credit card issuer is required in order for you to benefit from the "billing error law." In order for the billing-error law to apply, *you must notify your card issuer in writing no later than 60 days after the card issuer mails the first periodic statement that includes the disputed charge.* To learn where you must address this letter, and about other applicable rules, check the Billing Rights Summary that your card issuer has mailed to you, or ask the card issuer to mail you another.

When you contact the credit card issuer, give the card issuer all of the following information: (1) Your name (as it appears on your credit card); (2) the card number; (3) the name of the seller (as it appears on the credit card receipt, or on the card issuer's monthly statement); (4) the date of your purchase; (5) the amount you paid by credit card; and, (6) a brief description of the billing error. In your letter, you should also include (7) the addresses to which you are mailing the letter, and (8) the date of mailing or delivery.

If you have notified a card issuer of a "billing error," the "billing-error law" also *gives you the right to withhold payment of the disputed amount until (1) the dispute is resolved, or (2) the card issuer, after its investigation, determines that you have no case and explains why.* The right to withhold payment from the card issuer is an important part of the federal "billing-error law." However, it is important that you not attempt to use this law improperly, or where it doesn't apply.

If the card issuer has investigated a billing error that you have asserted, and has determined that there was no billing error, you are not legally required to accept the card issuer's decision. If you believe that you are right, you can continue to withhold payment, but you should be prepared to prove your case if the card issuer disputes your right to withhold payment. Remember that if you do not actually have a legal right to withhold payment, you will incur additional finance charges, and perhaps late payment charges, and the card issuer will report your account as delinquent.

Unless you are confident that your position is correct, it may be in your best interest to pay the card issuer and to attempt to resolve the dispute directly with the seller, if the card issuer's investigation has determined that you do not have a right to withhold payment. On the other hand, you should not hesitate to assert your rights under the "billing-error law" if your complaint against the seller is legitimate, and, especially, if the seller has not responded to your complaint, or is unable to do so because it has ceased doing business.

What is a "Billing Error?"

The term "billing error" includes (1) computational and similar errors, (2) unauthorized charges, (3) charges for property or services that haven't been provided, and (4) charges for items that haven't been accepted because they did not comply with the agreement between you and the seller. However, *once you have accepted an item, the rules on "billing errors" no longer apply.* (You have not "accepted" an item if, upon opening its package or seeing it for the first time, you reject it and notify the seller of the problem.) In that situation, your rights are limited to those provided under the withholding law (described in Legal Guide CR-7, How To Withhold Payment on a Credit Card Purchase).

While the "billing error law" is designed mainly for persons named in a credit card account, a court has held that its error correction procedures can be used by anyone from whom the creditor requests payment. (*Belmont v. Associates National Bank*, 2000 U.S. Dist. Lexis 13564.)

Credit Card "Withholding Law"

A legal right to withhold payment is provided by two different federal laws – which this Legal Guide refers to as the "billing-error law" and the "withholding law." The "billing-error law" is discussed in detail in this Legal Guide, and the "withholding law" is discussed in detail in Legal Guide CR-7, How to Withhold Payment on a Credit Card.

The federal "withholding law" gives cardholders a right to assert certain kinds of claims and defenses against the company that issued your credit card. If

your card was issued by a bank or some other third party, however, you can withhold payment under the “withholding law” only if the sale (1) was for more than \$50, and (2) took place in your home state or within 100 miles of your home address. *But your right to assert a “billing error” under the “billing-error law,” discussed in this Legal Guide, is not affected by the amount of the sale or the location of the seller.* So the right to have the card issuer correct a billing error under the “billing-error law” may be more important in many situations.

In some situations, you will only be able to assert rights under one of the two laws. For instance, you may have fully paid the card issuer and nothing remains owing, or you may have used your credit card in another state more than 100 miles from your residence. In those situations, you may have no right to withhold payment under the “withholding law.” While you have no right to withhold payment under the “withholding law,” you may be able to assert a “billing error” under the “billing-error law.” Just notify the card issuer in writing before the expiration of 60 days after the card issuer mailed the first billing statement that included the disputed charge. In that letter or other written communication, you can describe the problem, and also exercise your right to withhold payment until the billing error is resolved.

As noted above, there is one situation in which you will not be able to withhold payment under the “billing-error law.” If your claim or defense is based on the purchase or performance of a product that *you have already received and accepted*, your claim is not considered a “billing error,” and your only right to withhold payment will be the right, if any, that is, provided by the “withholding law.” For more details about the “withholding law,” see Legal Guide CR-7, How To Withhold Payment on a Credit Card Purchase.

How to Play it Safe

To play it safe, follow the procedure recommended under the heading, “Here's How To Correct a Billing Error,” on the first page of this Legal Guide. In that way, you will be doing what is needed under both laws. Then, if your card issuer asserts that you have no right to withhold payment,

ask the card issuer to explain exactly why. Then compare the card issuer's explanation with the information given in this Legal Guide. If you are “in the right,” then you might continue to withhold payment. If you are not “in the right,” then you should pay your card issuer. If you are uncertain about what to do, consult a lawyer or other legal expert regarding your rights and responsibilities.

What Laws Apply

Both California and federal laws apply. The federal law is the federal Fair Credit Billing Act, 15 United States Code sections 1666 and 1666i, and Federal Reserve Regulation Z, 12 Code of Federal Regulations sections 226.12(c) (“withholding law”) and 226.13 (“billing-error law”). The California law is the Song-Beverly Credit Card Act, located at Civil Code sections 1747 et seq. Other California laws also affect the operation of the federal law.

Whether you have a “claim” or “defense” against the seller is determined by California law, and whether you have “accepted” an item you have purchased is also determined by California law.

For further information about how these laws apply to the facts of your case, consult a lawyer or other legal expert and share with that person a copy of this flyer.

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